

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

RICHARD FREJOMIL,

Plaintiff,

-v-

10-CV-1579

KEITH BEATTIE, Corrections Officer, Great
Meadow Correctional Facility; and JAMES
YOLE, Corrections Officer, Great Meadow
Correctional Facility,

Defendants.

APPEARANCES:

OF COUNSEL:

RICHARD FREJOMIL
Plaintiff Pro Se
No. 88-A-6324
Great Meadow Correctional Facility
Box 51
Comstock, NY 12821

HON. ERIC T. SCHNEIDERMAN
Attorney General for the State of New York
Attorney for Defendant
The Capitol
Albany, NY 12224

ADRIENNE J. KERWIN, ESQ.
Ass't Attorney General

DAVID N. HURD
United States District Judge

DECISION and ORDER

Plaintiff brought this civil rights action pursuant to 42 U.S.C. § 1983. On March 3, 2011, defendants moved to dismiss the complaint and the motion was briefed. Plaintiff has since died. On November 28, 2011, the Honorable David R. Homer, United States

Magistrate Judge, advised, by Report-Recommendation, that defendants' motion to dismiss, Dkt. No. 11, be denied without prejudice to renew upon the filing or ordering of a substitution for Frejomil as the plaintiff in this action. No objections to the Report-Recommendation were filed.

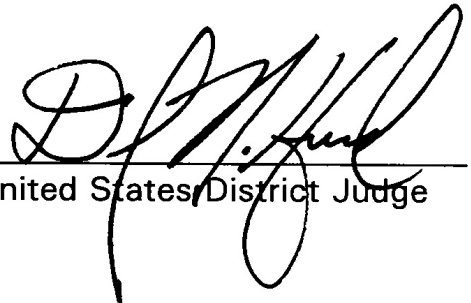
Based upon a careful review of the entire file and the recommendations of the Magistrate Judge, the Report-Recommendation is accepted in whole. See 28 U.S.C. 636(b)(1).

Therefore it is

ORDERED that

Defendants' motion to dismiss is DENIED without prejudice.

IT IS SO ORDERED.


United States District Judge

Dated: December 22, 2011
Utica, New York.